

BEFORE THE  
CALIFORNIA ENERGY COMMISSION

In the Matter of: )  
 ) Docket No. 07-AFC-3  
Application for Certification )  
of the CPV Sentinel Energy Project )  
By the CPV Sentinel, LLC )

Prehearing Conference on the Limited Issue of Air Quality

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 19, 2010  
1:30 P.M.

Reported by:  
Peter Petty

HEARING OFFICER

Kenneth Celli

Siting Committee Members and Their Advisors Present

James D. Boyd, Vice Chairperson and Presiding Member  
Tim Olson, his Advisor

STAFF PRESENT (Via Telephone)

Richard Ratliff, Staff Counsel  
Caryn Holmes, Staff Counsel  
John Kessler, Project Manager  
Steve Radis  
Jennifer Jennings, Public Advisor

Applicant

Michael J. Carroll, Esq., Latham & Watkins

Mark O. Turner, VP, Competitive Power Ventures

Roy Beldin, General Electric

Intervenors

Angela Johnson Mezaros, California Communities  
Against Toxics (CCAT)

Shana Lazerow, California for a Better Environment (CBE)

Also Present

Government Agencies

Mohsen Nazemi, SCAQMD  
Kurt Wiese, SCAQMD

Public

Mavis Scanlon, California Energy Markets  
William Kelly, California Current  
William Kissinger

# I N D E X

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P R O C E E D I N G S

MAY 19, 2010 1:52 P.M.

VICE CHAIR BOYD: Okay, welcome everybody. As Hearing Officer Celli mentioned a few moments ago, we apologize for the delay and we do not know why WebEx canceled us out, but it has been restarted with a "workaround," to use his term. This is Commissioner Jim Boyd, the Presiding and last standing member of the Sentinel Project, California Energy Commission Siting Committee. This is scheduled as a prehearing conference. I know we need to talk about a lot of status in this pre-hearing conference, to find out where we stand. This has been a interesting and difficult for everybody set of hearings that we have been trying to schedule for the future, so I appreciate all the efforts that I have read about in a long series of e-mails, of attempts to try to set hearings in the future, and what have you. But, with that, this is listed as a Prehearing Conference for the CPV Sentinel Energy Project, Evidentiary Hearings to be scheduled in the future. This is a prehearing conference on air quality. And as is traditional, I would like to introduce the committee, you are looking at it, and we have also sitting at the dais, again, as I indicated, I am Jim Boyd, Commissioner of the California Energy Commission, the Committee. Sitting at the dais with me, of course, is our Hearing Officer, Ken Celli,

1   whom I will turn the microphone over in just a moment. To  
2   my right, assisting me is my Advisor - it is time for me to  
3   go - Tim Olson. I did tell my staff, when I start  
4   forgetting who they are, really, drive me home and you  
5   cannot believe what a day it has been, my apologies. I have  
6   been either sitting in this room or in a closed session of  
7   the Commission virtually all day. And I am lacking sugar, I  
8   think. In any event, our Public Advisor, Jennifer Jennings,  
9   is sitting there in the audience, and with that, I think I  
10   would now like to ask the other parties to introduce  
11   themselves. I guess I will start with the Applicant, and  
12   then we will ask the staff, and the Intervenors, and so  
13   forth.

14               MR. CARROLL: Good afternoon, Mike Carroll with  
15   Latham and Watkins on behalf of the Applicant, CPV Sentinel,  
16   LLC, and sitting behind me are Mark Turner and William  
17   Mitchell of CPV Sentinel. Thank you.

18               VICE CHAIR BOYD: Thank you. Staff?

19               MR. RATLIFF: I am Dick Ratliff, and with me is  
20   Karen Holmes, counsel for staff. And with me also is John  
21   Kessler, the Project Manager, I am sorry.

22               VICE CHAIR BOYD: Contagious, isn't it? Okay, now,  
23   do we have Intervenors on the phone? According to our  
24   little data sheet here, they are out there, so if you would  
25   like to introduce yourselves, please?

1 MS. LAZEROW: Sure. This is Shana Lazerow,  
2 Intervenor with Communities for a Better Environment.

3 VICE CHAIR BOYD: Thank you, Ms. Lazerow. Next?

4 MS. JOHNSON MEZAROS: This is Angela Johnson Mezaros  
5 for California Communities Against Toxics.

6 VICE CHAIR BOYD: Thank you. Now, do we have any  
7 representatives of the local community, the County of  
8 Riverside, the City of Palm Springs or Desert Hot Springs?  
9 All right, I know we have representatives from the South  
10 Coast Air Quality Management District. Would you like to  
11 introduce yourselves, please?

12 MR. NAZEMI: Good afternoon. I am Mohsen Nazemi,  
13 Deputy Executive Officer of SCAQMD.

14 VICE CHAIR BOYD: Thank you, Mohsen.

15 MR. WIESE: Good afternoon, I am Kurt Wiese, General  
16 Counsel for South Coast Air Quality.

17 VICE CHAIR BOYD: Welcome. Are there any other  
18 state or local government representatives, either in the  
19 room or on the phone? Although I think I recognize  
20 everybody in the room, practically. Okay, Mr. Celli, would  
21 you like to have the public introduce themselves? Or shall  
22 we wait for that part of the hearing? There are other  
23 public on the phone, but I am going to turn this over to you  
24 now.

25 HEARING OFFICER CELLI: Thank you, Commissioner. I

1 want to acknowledge that I do see on the telephone, I have  
2 got Intervenor Angela Johnson Mezaros, I have Intervenor  
3 Shana Lazerow, I have Steve Radis, who I understand is with  
4 the staff, I have got Roy Beldin, but he appears to have  
5 hung up.

6 MR. BELDIN: No, actually we are on the phone. I am  
7 with the General Electric Company on behalf of CPV Sentinel.

8 HEARING OFFICER CELLI: Thank you very much. Are  
9 you Roy Beldin, I am talking to?

10 MR. BELDIN: Yes, that is correct.

11 HEARING OFFICER CELLI: Okay, thank you for calling  
12 back; I appreciate your stamina, given what we are going  
13 through today. And I also have Mavis Scanlon?

14 MS. SCANLON: Hi, yes, Mavis from California Energy  
15 Markets.

16 HEARING OFFICER CELLI: I am sorry, say it again?

17 MS. SCANLON: Mavis Scanlon from California Energy  
18 Markets.

19 HEARING OFFICER CELLI: California Energy Markets,  
20 okay. I could not hear that very well.

21 MS. SCANLON: You know what? I was on the speaker.  
22 It is Mavis with California Energy Markets.

23 HEARING OFFICER CELLI: Thank you very much, Ms.  
24 Scanlon. And then I finally have William Kelly. Are you on  
25 the line?

1 MR. KELLY: William Kelly with California Current.

2 Thank you.

3 HEARING OFFICER CELLI: Thank you. And that would  
4 be the sum total of the people I have online. People may  
5 call in later. I am going to give the parties an  
6 opportunity, or rather, the public the opportunity to make a  
7 public comment at the close of the proceedings. Hopefully  
8 we will not go that long today. So if you wish to make a  
9 public comment, please hang in there and wait for me to  
10 signal to you that it is time for public comment.

11 With that, a little background on today. The  
12 Committee scheduled this Prehearing Conference in a Revised  
13 Notice filed April 29<sup>th</sup>, 2010. As explained in the Notice,  
14 the basic purposes of the Prehearing Conference are to  
15 assess the parties' readiness for hearings, to clarify areas  
16 of agreement or dispute, to identify witnesses and exhibits,  
17 to determine upon which areas parties desire to cross  
18 examine witnesses, and to discuss associated procedural  
19 matters. To achieve these purposes, we required in the  
20 Notice that any party desiring to examine witnesses at a  
21 future Evidentiary Hearing must file a Prehearing Conference  
22 Statement by May 13<sup>th</sup>, 2010. Timely Prehearing Conference  
23 Statements were filed by Applicant and staff. Both  
24 Intervenor's filed similar statements of unavailability of  
25 testimony pending receipt of documents from South Coast Air



1 Quality Management District, pursuant to a Public Records  
2 Act Request. From here on out, I am going to refer to South  
3 Coast Air Quality Management District as "South Coast."

4 Procedures. First, we will discuss the various  
5 Options for Proceeding with the case regarding the air  
6 quality issues today, and that means we are talking  
7 scheduling; next, we will discuss matters contained in the  
8 Prehearing Conference Statement to the extent that we can,  
9 productively; and finally, we are going to provide an  
10 opportunity for public comment.

11 Beginning, then, with Options to Proceed, on June  
12 26<sup>th</sup>, 2007, the Application for Certification was filed with  
13 the California Energy Commission. On August 29<sup>th</sup>, 2007, the  
14 Commission accepted the Application as complete and Data  
15 Adequate, and on July 31<sup>st</sup>, 2008, the Commission staff  
16 released its Preliminary Staff Assessment, and on October  
17 10<sup>th</sup>, 2008, the Commission staff released its Final Staff  
18 Assessment. In October 2007, the Applicant asked the  
19 Committee to bifurcate the issue of Air Quality because the  
20 Final Determination of Compliance, or what we will refer to  
21 as the "FDOC," submitted by the South Coast Air Management  
22 District, or South Coast, at the time, did not identify the  
23 ERCs to be applied to the project. On November 3<sup>rd</sup> and  
24 December 5<sup>th</sup>, 2008, evidence on all other topics, except Air  
25 Quality, was received, and the record was closed on those

1 topics on December 19<sup>th</sup>, 2008. On December 7<sup>th</sup>, 2009, Angela  
2 Johnson Mezaros, representing California Communities Against  
3 Toxics, which we will refer to as "CCAT," filed a Petition  
4 to Intervene, which was granted on December 26<sup>th</sup>, 2009. On  
5 March 10<sup>th</sup>, 2010, Shana Lazerow, representing Communities for  
6 a Better Environment, filed a Petition to Intervene, which  
7 was granted on March 24<sup>th</sup>, 2010. On March 30<sup>th</sup>, 2010, CCAT  
8 petitioned for an Order allowing Data Requests. On April  
9 7<sup>th</sup>, 2010, Applicant filed an Opposition Brief, and on April  
10 15<sup>th</sup>, 2010, CCAT filed a brief rebuttal, and on April 22<sup>nd</sup>,  
11 2010, the Committee denied CCAT's Order because the  
12 documents requested were equally available to CCAT through a  
13 Public Records Act Request to, among other parties, South  
14 Coast, who is not a party to this action. On April 7<sup>th</sup>,  
15 2010, the Committee Noticed this Prehearing Conference for  
16 May 19<sup>th</sup>, 2010, and the Evidentiary Hearing for July 19<sup>th</sup>,  
17 2010. The Committee ordered the Intervenor's testimony to  
18 be filed by April 28<sup>th</sup>, 2010, and CCAT filed a Statement of  
19 Unavailability of Testimony based upon South Coast's slow  
20 response to CCAT's Public Records Request. Also, CBE,  
21 Communities for a Better Environment, filed a Statement of  
22 Unavailability of Testimony based on South Coast Air Quality  
23 Management District's slow response to CCAT's Public Records  
24 Request. Apparently, CBE did not file a Public Records  
25 Request with South Coast, but relied on CCAT's Discovery

1 efforts. Obviously CBE and CCAT are working cooperatively  
2 on this intervention, as they are also two of the three  
3 Complainants in the parallel action in Superior Court. On  
4 April 28<sup>th</sup>, 2010, I sent an e-mail to give the parties early  
5 notification that the Committee had advanced the Evidentiary  
6 Hearing to June 1<sup>st</sup>, 2010, and that a notice would follow.  
7 On April 29<sup>th</sup>, 2010, the Committee issued the Revised Notice  
8 of Evidentiary Hearing set for June 1<sup>st</sup>, with all other dates  
9 to remain as previously set. Later, on April 29<sup>th</sup>, 2010, I  
10 received an e-mail from Angela Johnson Mezaros stating that  
11 she was unavailable to appear on June 1<sup>st</sup>, and that she had  
12 not received the requested Public Records from South Coast.  
13 Also, on April 29<sup>th</sup>, I received an e-mail from counsel for  
14 Applicant, Michael Carroll, indicating that the parties had  
15 originally stipulated to the schedule that had included a  
16 June 2<sup>nd</sup> Evidentiary Hearing date as requested by Ms. Johnson  
17 Mezaros, and that the July 19<sup>th</sup> Evidentiary Hearing date was  
18 imposed by the Committee and not stipulated to by the  
19 parties; Ms. Johnson Mezaros agreed with Mr. Carroll on  
20 these points in a subsequent e-mail reply. On May 3<sup>rd</sup>, I  
21 left voicemails for Shana Lazerow, explaining that, since  
22 Ms. Johnson Mezaros could not appear on June 1<sup>st</sup>, we would  
23 reset the Evidentiary Hearing back to July 19<sup>th</sup>, again. On  
24 May 4<sup>th</sup>, I sent an e-mail to Shana Lazerow, stating that I  
25 had left two voicemails for her, and to please call me

1 immediately regarding the Sentinel Hearing Schedule. On May  
2 4<sup>th</sup>, 2010, I received an e-mail from Shana Lazerow,  
3 representing CBE, which stated, "I actually am no longer  
4 available July 19<sup>th</sup>. I had planned a vacation for the first  
5 two weeks of July, but when I received the rescheduling  
6 notice, I saved some money on tickets and am now going to be  
7 out of the country July 9<sup>th</sup> through the 23<sup>rd</sup>." The e-mail  
8 also stated that Ms. Lazerow was available to appear on June  
9 1<sup>st</sup>, but that she had also not received the requested Public  
10 Records Request from South Coast. After frustrated attempts  
11 to reschedule the Evidentiary Hearing on May 5<sup>th</sup>, the  
12 Committee ordered the parties to confer and stipulate to an  
13 Evidentiary Hearing date and report back to the Committee.  
14 The Committee gave the following list of 19 dates from which  
15 to choose, July 1<sup>st</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 26<sup>th</sup>, August 9<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>,  
16 13<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup>, and September 7<sup>th</sup>,  
17 9<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, or 23<sup>rd</sup>. On the evening of May 6<sup>th</sup>, 2010, I  
18 was informed by the parties that they were unable to agree  
19 upon a date for the Evidentiary Hearing. On May 7<sup>th</sup>, 2010,  
20 Staff Counsel Caryn Holmes, stated that Staff Counsel was  
21 available June 1<sup>st</sup>, July 15<sup>th</sup>, July 16<sup>th</sup>, or July 19<sup>th</sup>, but not  
22 July 26<sup>th</sup>, and no dates at all in the month of August. On  
23 May 10<sup>th</sup>, I confirmed that the dates would remain as set with  
24 the Evidentiary Hearing set for June 1<sup>st</sup>, 2010, and on May  
25 12<sup>th</sup>, the parties were ordered to appear at the Prehearing

1 Conference with their calendars and proof of unavailability  
2 for any dates from June through September, including tickets  
3 purchased, showing dates of travel and purchase, as well as  
4 the Court name, case number, and Judge's name and telephone  
5 numbers for the courtroom. CBE's Prehearing Conference  
6 Statement, "Strenuously opposes the calendaring of the  
7 Evidentiary Hearing on June 1<sup>st</sup>, 2010, due to CCAT's  
8 unavailability." That is CBE's opposing it based on CCAT's  
9 unavailability. In the Errata filed on May 17<sup>th</sup>, 2010, Shana  
10 Lazerow of CBE states that, this is a quote, "CBE's counsel  
11 has planned vacations out of the country July 1<sup>st</sup> through  
12 July 17<sup>th</sup>." So this is inconsistent with the previous  
13 statement that two weeks before said, "I'm not available  
14 July 9<sup>th</sup> through 23<sup>rd</sup>," so with that, Ms. Lazerow, who is on  
15 the telephone, it appears that you are now available on the  
16 19<sup>th</sup>? Is that correct?

17 MS. LAZEROW: That is correct. I am now available  
18 on the 19<sup>th</sup>, although, as you can see, I will be getting back  
19 into the country two days before that, and given my vacation  
20 schedule and counsel for CCAT's vacation schedule, that  
21 actually would make it pretty difficult for us to prepare  
22 for an Evidentiary Hearing on the first day back, but I am  
23 in fact in the country on July 19<sup>th</sup>.

24 HEARING OFFICER CELLI: I appreciate that. It  
25 appears, then, from the record, that all four parties can

1 appear on July 19<sup>th</sup>. The Committee will notice the  
2 Evidentiary Hearing again on the July 19<sup>th</sup> date. Further,  
3 since both CBE and CCAT are now in possession of the  
4 requested public records - and do I have that correct, Ms.  
5 Mezaros?

6 MS. JOHNSON MEZAROS: Yes, on May the 12<sup>th</sup>, and the  
7 evening of May the 12<sup>th</sup>, the District submitted to us  
8 documents which we have received.

9 HEARING OFFICER CELLI: I am sorry, you kind of  
10 faded out a little bit. So the question is, did you receive  
11 the requested public records from South Coast Air Quality  
12 Management District?

13 MS. JOHNSON MEZAROS: We received a response that  
14 the District submitted to us on May 12<sup>th</sup>. We are still  
15 determining whether or not the request is complete.

16 HEARING OFFICER CELLI: And Ms. Lazerow, did you  
17 receive - Ms. Lazerow, did you even make a Public Records  
18 Act request to South Coast?

19 MS. LAZEROW: Did I make - no, no. There was no  
20 need to repeat the existing Public Records Act request that  
21 CCAT had already made. The documents that we received,  
22 there appears to be, well, AQMD claims to have given 589  
23 documents in one response to the Public Records Act request,  
24 30 in another, and the third question that Public Records  
25 Act request generated over 200 pages of documents, just to

1 give you a sense of what we appear to have received thus far  
2 in response to our PRA.

3 HEARING OFFICER CELLI: So you have over 200 pages  
4 of documents right now in your possession?

5 MS. LAZEROW: Oh, no, we have links to almost 600  
6 documents - links to individually paginated documents.

7 HEARING OFFICER CELLI: Very good. I am going to  
8 first - I am going to go around and speak to each individual  
9 party and confirm that this July 19<sup>th</sup> Evidentiary Hearing  
10 date is going to work. First, Applicant?

11 MR. CARROLL: Yes, the July 19<sup>th</sup> date does work for  
12 the Applicant. We are very pleased that we were able to  
13 find a date within the months of June and July that work for  
14 all of the parties. We certainly support and would  
15 encourage the participation of all of the parties, and so we  
16 are pleased that the date that is not too far into the  
17 future that works well with the parties. That is, of  
18 course, two months away. We understand that some people may  
19 have vacations scheduled during some periods of that two  
20 month period, but we would assume that, given that it is two  
21 months from today, that provides all of the parties with  
22 ample time to prepare for the hearings either before,  
23 during, or after vacation. So we are pleased with that  
24 date. Thank you.

25 HEARING OFFICER CELLI: Thank you. Staff, please.

1 MR. RATLIFF: Yes, July 19 works for staff.

2 HEARING OFFICER CELLI: Excellent. And so, staff,  
3 you are going to have all of your witnesses available on  
4 July 19<sup>th</sup>, you have inquired and checked with your witnesses  
5 in terms of vacation and so forth?

6 MR. RATLIFF: Yes.

7 HEARING OFFICER CELLI: I would say that perhaps  
8 they could testify or appear by WebEx, but my confidence is  
9 quite shaken on WebEx today. And then I already have  
10 confirmation from both Intervenorors, Shana Lazerow and Angela  
11 Mezaros, that July 19<sup>th</sup> will work. Did I get confirmation  
12 from you, Angela Johnson Mezaros?

13 MS. JOHNSON MEZAROS: I should return from my  
14 vacation on the 17<sup>th</sup> of July, which would mean that I would  
15 not be on vacation on the 19<sup>th</sup>, however, I would also note  
16 that it makes preparation difficult and would prefer the 26<sup>th</sup>  
17 date, which was the date that was offered by the Committee  
18 and we seem to be able to have consensus on, although I  
19 understand that there were some issues about staff  
20 availability of an expert on the 26<sup>th</sup>. And as for the  
21 question of expert - because we have not yet had a date that  
22 has been given to us, we have not been able to inquire, I  
23 have not been able to inquire either. Because we just  
24 received the documents, we have not been able to identify  
25 which of the possible experts are going to be able to



1 provide relevant testimony, and we certainly have not been  
2 able to discuss with them their availability for a July 19<sup>th</sup>  
3 date.

4 HEARING OFFICER CELLI: Well, I feel like half the  
5 battle is at least we have your availability, Ms. Johnson  
6 Mezaros, and we have Ms. Lazerow, who is available on the  
7 19<sup>th</sup>, as well, now. Isn't that correct, Ms. Lazerow?

8 MS. LAZEROW: That is correct.

9 HEARING OFFICER CELLI: Okay, thank you. Now, then,  
10 with that, we figure that July 19<sup>th</sup>, being two months away,  
11 all of the parties ought to be able to get their witnesses  
12 and all of their ducks in a row so that we can have a  
13 complete evidentiary hearing. I mean, we are talking about  
14 air quality, one topic out of however, you know, 22 that we  
15 usually have. So it cannot be that complicated.

16 MS. JOHNSON MEZAROS: It has only been two years in  
17 the making.

18 HEARING OFFICER CELLI: Yes. Now, I am going to -  
19 well, the record should reflect that the Committee is  
20 smiling, but I want to also leave intact the June 1<sup>st</sup> date,  
21 which right now is set for the Evidentiary Hearing, and I am  
22 going to use that date as a Prehearing Conference because  
23 obviously we are not going to get much done today since the  
24 Intervenors have explained that they have not received the  
25 documents that they needed until three days ago, I guess it

1 was. So, with that, I am going to acknowledge Ms. Johnson  
2 Mezaros, that you cannot make June 1<sup>st</sup>, as I recall?

3 MS. JOHNSON MEZAROS: That is correct.

4 HEARING OFFICER CELLI: Okay, but Shana Lazerow can  
5 make June 1<sup>st</sup>, isn't that correct, Ms. Lazerow?

6 MS. LAZEROW: That is correct.

7 HEARING OFFICER CELLI: Okay, so what my intention  
8 to do is this, and I am going to try to accommodate you, Ms.  
9 Johnson Mezaros, because you gave me early notification of  
10 your unavailability on the June 1<sup>st</sup> date, is the parties will  
11 - let me just first say that we have received all of the  
12 testimony from the Applicant in a timely fashion, and all of  
13 the parties, I take it, have already received the testimony  
14 from Applicant. Staff's testimony was filed, the FSA, I do  
15 note also that there was an Errata that came out within the  
16 last couple of days that was sent to the POS's. Is that  
17 correct? So everybody has Applicant's and staff's testimony  
18 at this time. What is lacking, and what I do not have, is  
19 the Intervenor's testimony, and I am going to ask that the  
20 Intervenor file that testimony on June 1<sup>st</sup>, which will be  
21 the same day as the Prehearing Conference. Now, please  
22 adhere to the directives of the Notice for the Prehearing  
23 Conference and Evidentiary Hearing. I will re-notice that,  
24 and we will get another Notice out that shows we have a July  
25 19<sup>th</sup> Evidentiary Hearing date, but, Ms. Johnson Mezaros and

1 Ms. Lazerow, what the Committee needs are two sets of  
2 evidence, one is evidence in numerical order, which would be  
3 your exhibits. I do not remember what numbers, 600, let's  
4 say, through however many you have. And then we need it -  
5 oh, wait a second, we are only doing Air Quality. I only  
6 have one topic. So, really, all I need is just numerical -  
7 a list of your exhibits, and a copy of each exhibit in  
8 numerical order. I do not need the usual alphabetical. We  
9 do not need that for a single topic evidentiary hearing. So  
10 is there any question about that, Ms. Lazerow?

11 MS. LAZEROW: Uh, about how to present our exhibits?  
12 No, I have no questions about that.

13 HEARING OFFICER CELLI: And Ms. Johnson Mezaros, any  
14 questions?

15 MS. JOHNSON MEZAROS: Well, your explanation about  
16 how to present the exhibits is, of course, clear; however, I  
17 believe that requiring that we submit our testimony on June  
18 1<sup>st</sup> is difficult.

19 HEARING OFFICER CELLI: Well, I understand, believe  
20 me, we are all under a lot of pressure here, and I just - if  
21 need be, I will make a little record here, if I can find my  
22 - give me a moment - let's see -

23 MS. JOHNSON MEZAROS: Am I off? Or am I still  
24 there?

25 HEARING OFFICER CELLI: You are still here, Ms.

1 Mezaros. All right, let me see who I can talk to.

2 MS. JOHNSON MEZAROS: Can you hear us?

3 HEARING OFFICER CELLI: Yeah, stay with us  
4 everybody. It is not a good day for electronics. And I  
5 have three call-in users, now, so hopefully if anyone was  
6 hung up on, they called back. Let me get back to - I am  
7 sorry for that. I just want to make a little record with  
8 regard to the participation of the Intervenors. When the  
9 Intervenors were granted the right to become parties, we  
10 required that the Intervenors file an Issues Identification  
11 Report, and the Issues Identification Report submitted by  
12 CBE listed three issues, first, that South Coast had not  
13 adopted a rule that would allow them to transfer ERCs to  
14 Sentinel, nor have they submitted such a rule to the US EPA,  
15 was the first issue; the second issue was relying on AB 1318  
16 which is the subject of the litigation in the courts, that  
17 the AFC should not move forward until litigation is  
18 resolved; and the third issue was that, well, it was not  
19 really an issue so much as a list of requirements of AB 13  
20 in which the project must comply. The three issues are  
21 entirely subsumed in the nine issues contained in CCAT's  
22 Issues Identification Report, and in fact, CBE's third issue  
23 is practically verbatim recitation of CCAT's eighth issue.  
24 On May 13<sup>th</sup>, 2010, when CBE filed its Prehearing Conference  
25 Statement, it contained virtually identical language as that

1 contained in CCAT's Prehearing Conference Statement, and  
2 CBE's Prehearing Conference Statement, even though the CBE  
3 has already stated that it would be available to appear on  
4 June 1<sup>st</sup>, it had opposed because of CCAT's unavailability.  
5 Obviously, CCAT and CBE are working closely together, and  
6 there is nothing wrong with that approach; however, based on  
7 the identity of the issues of the parties, and the  
8 record showing that CCAT has really done the lion's share of  
9 the work, it appears that the positions are adequately  
10 represented if either party is here because they have the  
11 same issues. Now, I understand, Ms. Mezaros, that you  
12 cannot make it on the 1<sup>st</sup>, but what I need on that date would  
13 be the testimony and we are going to need to know who your  
14 witnesses are and how much time you expect to take. I  
15 wonder if it is really necessary for both CBE and CCAT to  
16 have separate witnesses for what appear to me to be the same  
17 issues. Would you care to speak to that, Ms. Mezaros - Ms.  
18 Johnson Mezaros?

19 MS. JOHNSON MEZAROS: Just to acknowledge first,  
20 quickly, that clearly CCAT and CBE are working together on  
21 the issues for quite some time, but -

22 HEARING OFFICER CELLI: Can you please speak closer  
23 into your telephone so you could be a little louder here,  
24 please?

25 MS. JOHNSON MEZAROS: Okay, sorry. Is that any

1 better?

2 HEARING OFFICER CELLI: Much better, thank you.

3 MS. JOHNSON MEZAROS: Okay, clearly CCAT and CBE  
4 have been working together on these issues for quite some  
5 time and, as you noted, Mr. Celli, there is nothing  
6 inherently problematic about that. However, I would just  
7 like to make it clear that we have separate clients and our  
8 clients may or may not have overlapping interests in how the  
9 proceedings move forward. And so, simply because we have  
10 been working together is not the same thing as we can  
11 represent one another, nor is it the same thing as saying  
12 that we have identical interests, and our representation is  
13 fungible between the two separate parties. As to the  
14 question of needing testimony by the 1<sup>st</sup>, and whether or not  
15 we both need to be there, I think that there are two issues  
16 that are involved with that, one is a timing issue that is,  
17 if we are going to have our evidentiary hearing on, now,  
18 July 19<sup>th</sup>, it seems reasonable to allow time for us to review  
19 the documents that have been provided to us by the South  
20 Coast, which we believe are important for the Commission to  
21 make a final determination as to whether or not it is going  
22 to allow Sentinel to rely upon credits that have been  
23 offered by the South Coast in their reliance on the  
24 challenged AB 1318; and the second question would be, if we  
25 are going to have a Prehearing Conference where we are

1 making decisions about testimony and the like, whether it is  
2 appropriate for each of the parties to be present, like you  
3 noted. As soon as we received the Orders from the  
4 Commission, I notified - from the Committee - I notified the  
5 Committee that I would not be available on June 1<sup>st</sup>.

6 HEARING OFFICER CELLI: And I do appreciate that. I  
7 still need you - you are fading away a little bit, so stay  
8 right on your phone if you would, please.

9 MS. JOHNSON MEDAROS: Okay.

10 HEARING OFFICER CELLI: So the two issues, one, that  
11 you have just received South Coast's - documentation from  
12 South Coast, and you are questioning whether staff could  
13 proceed without having the same documentation. Is that the  
14 way - am I -

15 MS. JOHNSON MEDAROS: No, I am not. Staff has  
16 clearly made a determination that it does not believe that  
17 it needs to see any documentation. The question is whether  
18 or not it is necessary for CCAT to have testimony to this  
19 committee by June 19<sup>th</sup> - I am sorry, by June 1<sup>st</sup> - when we do  
20 not have an Evidentiary Hearing scheduled until July 19<sup>th</sup>. I  
21 am suggesting that we should have some time to look at the  
22 documents and some time to interact with experts, and get  
23 something to the committee. I am perfectly prepared, given  
24 the statements I have already made about the difficulty of  
25 being available on July 19<sup>th</sup>, but I am perfectly prepared to

1 commit to that date and to submit testimony that allows that  
2 date to move forward, but it does seem to me that June 1<sup>st</sup> is  
3 an unnecessarily short timeframe.

4 HEARING OFFICER CELLI: You know, Ms. Johnson  
5 Mezaros, I am kind of smirking as I am sitting here because,  
6 given the trouble I got in attempting to get - I mean, there  
7 are just no dates available. I mean, how am I supposed to  
8 get all four of you in the same room at the same time? If  
9 we had an available date, we would probably have picked that  
10 date already. And so the difficulty I am having is that -  
11 and there is more to it than just getting the parties in the  
12 room, I also have to get the Commissioner in the room, and I  
13 have a lot of coordination there. So I just do not think  
14 that there is any date that is available between June and  
15 July 19<sup>th</sup>, other than that June 1<sup>st</sup> date that all of the  
16 parties could appear simultaneously at.

17 MS. JOHNSON MEDAROS: And we have to submit our  
18 testimony - if we are going to submit our testimony on the  
19 same day as the hearing, is it necessary to have the  
20 testimony prior to the Prehearing Conference?

21 HEARING OFFICER CELLI: Well, generally it is, and I  
22 will tell you the reason why. First of all, there is a  
23 fairness issue because, you know, half of the parties have  
24 already submitted all of their testimony, and you are in  
25 possession of that now. So it seems inherently unfair to



1 let one party - to force one parties, or two parties, to  
2 submit their testimony according to a schedule, and then  
3 change the deal mid-way through and allow the other parties  
4 a month or two to review their testimony. I want to make  
5 the observation that, at least in the case of CCAT, your  
6 petition was granted in 2009 at the very end, in December,  
7 so we are in May. You have been living with this case for  
8 five months. I acknowledge that you did not receive the  
9 Public Records that you had requested as quickly as we had  
10 anticipated, but the request was not made until - was it  
11 April? So I do not mean to - I want not to have to penalize  
12 some parties because other parties who came in late in the  
13 game, and this is years old, this case, have decided that  
14 they are making it up as they go along. I am not saying  
15 that is what you are doing.

16 MR. RATLIFF: Mr. Celli?

17 MS. JOHNSON MEDAROS: Well, Mr. Celli -

18 HEARING OFFICER CELLI: One moment.

19 MR. RATLIFF: Mr. Celli, if I may, and speaking for  
20 staff, there might be some middle ground for accommodating a  
21 later filing and still holding a Prehearing Conference on  
22 June 1<sup>st</sup>, it seems to me. We would not object to, assuming  
23 the Applicant agrees, to a mid-June deadline for the  
24 Intervenors to file their testimony, but it would seem  
25 reasonable if perhaps they cannot provide their testimony by

1 June 1<sup>st</sup>, they could provide the specific areas that they  
2 intent to file their testimony in, and so we at least have  
3 the ability to know what the issues are on June 1<sup>st</sup>, and let  
4 the testimony follow, perhaps a couple weeks later. That  
5 would seem to be a reasonable way to proceed, from our point  
6 of view. It is just that, right now, we do not feel like we  
7 have any idea what the issues are and if they could identify  
8 the issues for us and provide the testimony two weeks later,  
9 I think that would be something staff would still be able to  
10 respond to.

11 HEARING OFFICER CELLI: Well, that would be great.  
12 I would want to hear from Applicant about that. But I want  
13 to be clear that that June 1<sup>st</sup> date would be Applicant,  
14 staff, CBE, because CCAT cannot be here on June 1<sup>st</sup>, so I am  
15 sort of hobbled there, I only have three parties present.  
16 You will not have their testimony on June 1<sup>st</sup>. It is almost  
17 - you know, what you are suggesting is perhaps some sort of  
18 summary that sort of explains who will be testifying and  
19 generally what issues they are going to be tackling? Is  
20 that what you have in mind, Mr. Ratliff?

21 MR. RATLIFF: Well, we would like to have the  
22 specifying of the issues on June 1<sup>st</sup>, with the testimony to  
23 follow at some reasonable time, such as two weeks later. I  
24 realize that you probably need to hear from the Applicant  
25 about that, as well, but that might be a middle ground way

1 to allow the Intervenor to have more time.

2 HEARING OFFICER CELLI: But there would be no  
3 further hearings because we have not been able to get a date  
4 until the evidentiary hearing.

5 MR. RATLIFF: That is right.

6 HEARING OFFICER CELLI: Okay -

7 MR. RATLIFF: That is why it is important that they  
8 specify their issues and then provide testimony that is in  
9 accordance with that. What we sort of fear might happen by  
10 - if there is another date, it may mean that there is this  
11 kind of continual shifting throughout the months of June and  
12 July, where we end up not knowing what the issues are at the  
13 final hearing because they had changed in the mean time,  
14 which I think would be very unfortunate for all of us.

15 HEARING OFFICER CELLI: Well, I think that is very  
16 generous and reasonable on the part of staff. Let's hear  
17 from Applicant.

18 MR. CARROLL: On behalf of the Applicant, let me  
19 just preface this by saying that I think that the efforts  
20 that the Committee and staff have gone through to try to  
21 accommodate the Intervenor here are somewhat unprecedented,  
22 in my experience; having said that, as I said at the outset,  
23 we encourage and want this Board, as best we can within  
24 certain broad parameters, the full participation of the  
25 parties, and we would have no objection to the proposal that

1 Mr. Ratliff made, which, to paraphrase, just to make sure  
2 that I understand it, would be that, by the June 1<sup>st</sup> date,  
3 the Intervenors would identify with specificity exactly what  
4 issues they intend to address at the Evidentiary Hearings,  
5 and then, at some later date, and I do not know if one was  
6 proposed, but some time later towards the middle month of  
7 June, that would be a deadline for the submission of  
8 testimony. And we would not object to that. I will say at  
9 this point, because as we are talking about specificity of  
10 issues, you know, it has been said that the remaining  
11 Evidentiary Hearings are limited to air quality, and that is  
12 true. From our perspective, they are even more narrow than  
13 that, they are limited to the PM<sub>10</sub> and SO<sub>x</sub> emission offset  
14 strategy for this project. And I will go on record now with  
15 saying that we will strenuously object to any attempt to  
16 introduce testimony beyond that issue because nothing has  
17 precluded any of the parties from filing testimony in this  
18 matter on any issue beyond the SO<sub>x</sub> and PM<sub>10</sub> emission offset  
19 strategy for this project. So this whole reason given for  
20 missing the previously set dates for filing testimony was  
21 the unavailability of the information from the South Coast  
22 AQMD, pursuant to the Public Records Act Request. So our  
23 assumption is that any testimony that is going to be filed  
24 is related directly to that information, since, as I said,  
25 nothing precluded the parties from filing testimony on any

1 other air quality issues. So we agree, we have a very  
2 narrow set of issues to be addressed here. We certainly  
3 would like to understand with greater specificity what those  
4 narrow issues are. But having said that, we have no  
5 objection to the proposal that would provide the Intervenor  
6 with additional time to prepare and file their testimony.

7 HEARING OFFICER CELLI: And before I inquire of the  
8 Intervenor, I just want to be clear, my recollection was  
9 that we received the FSA - this is back last year when we  
10 had the hearing, the Evidentiary Hearing - we took in, that  
11 is, the Committee received evidence on all the other topic  
12 areas, except air quality, and that was Applicant's Exhibits  
13 were not received. Is my recollection accurate on that?

14 MR. CARROLL: That is correct.

15 HEARING OFFICER CELLI: Okay. So we are going to be  
16 receiving all of the air quality - we have already received  
17 the FSA, and then there will be additional - there is  
18 supplemental FSAs and so forth. So what I would like to do  
19 next, then, is, Ms. Mezaros, you were speaking last, and the  
20 proposal right now is that we keep the Prehearing Conference  
21 for June 1<sup>st</sup> with the remaining three parties, that on June  
22 1<sup>st</sup> the parties receive essentially a statement, a  
23 specification of what the issues are, the witnesses to be  
24 called, I think given the discussion we are having, an  
25 Exhibit List would be premature on June 1<sup>st</sup>, then, so really

1 what you are looking for is substance of what the issues are  
2 and what the substance of the testimony will be. Do you  
3 agree with that, Mr. Carroll?

4 MR. CARROLL: Yes, that is my understanding.

5 HEARING OFFICER CELLI: Is that what you had in  
6 mind, Mr. Ratliff?

7 MR. RATLIFF: Yes.

8 HEARING OFFICER CELLI: Okay, so Ms. Mezaros, do you  
9 understand that we are looking at a June 1<sup>st</sup> date for the  
10 submission of that and we will put out an Order that  
11 articulates this, and then a June 15<sup>th</sup>, which is two weeks  
12 afterwards, you would have to submit your testimony. Are  
13 you there, Ms. Johnson Mezaros?

14 MS. JOHNSON MEZAROS: I am here.

15 HEARING OFFICER CELLI: Okay, and also, I am going  
16 to ask you again to speak right into your phone so we can  
17 hear you clearly.

18 MS. JOHNSON MEZAROS: Okay. So you are asking me, I  
19 am sorry, so you are asking me for my comments on this  
20 proposal?

21 HEARING OFFICER CELLI: Actually, I am just asking  
22 whether you heard it and understood it, first.

23 MS. JOHNSON MEZAROS: Yes, I believe that I  
24 understand that you are proposing to have a June 1<sup>st</sup>  
25 Prehearing Conference that would exclude CCAT, and proposing

1 to have testimony due on that date?

2 HEARING OFFICER CELLI: No. What would be due on  
3 June 1<sup>st</sup> -

4 MS. JOHNSON MEZAROS: I am sorry, and have a summary  
5 of the issues identified on that date.

6 HEARING OFFICER CELLI: That is correct, an  
7 identification of the issues and the witnesses to be called.

8 MS. JOHNSON MEZAROS: Right.

9 HEARING OFFICER CELLI: And then, on June 15<sup>th</sup>,  
10 which is two weeks after that, two weeks directly, the  
11 Intervenors would be required to submit their testimony.

12 MS. JOHNSON MEZAROS: Okay.

13 HEARING OFFICER CELLI: Do you understand that?

14 MS. JOHNSON MEZAROS: I believe I understand that.

15 HEARING OFFICER CELLI: Okay, and again, I am going  
16 to ask you to speak directly into your phone because you  
17 have a tendency to sort of go quiet on us after you start  
18 speaking. So anything further on that, Ms. Johnson Mezaros?

19 MS. JOHNSON MEZAROS: I will simply for the record  
20 register my opposition to having the Prehearing Conference  
21 on a date that CCAT would not be available to participate.

22 HEARING OFFICER CELLI: And I hear you, and we are  
23 doing our best. I mean, three out of four ain't bad, given  
24 our history of setting dates together. So I have staff  
25 looking like they wanted to make a comment.

1 MS. HOLMES: Hearing Officer Celli, thank you.  
2 Caryn Holmes on behalf of staff. I think that since all  
3 that is going to be filed by the Intervenor is a statement,  
4 I would like to recommend that the filing date be the day  
5 before the Prehearing Conference so that, when we show up at  
6 the Prehearing Conference, we have had the opportunity to  
7 read it. I do not want to -

8 HEARING OFFICER CELLI: I would like to do that, but  
9 that is nine days from now. That is my problem. I cannot.

10 MS. HOLMES: I am asking that it be filed by 5:00,  
11 so it would be the day before you are holding the subsequent  
12 Prehearing Conference. My concern is that if you do not -

13 MS. JOHNSON MEDAROS: That is Memorial Day.

14 HEARING OFFICER CELLI: That is Memorial Day.

15 MS. HOLMES: But my concern is that we will not get  
16 the statement in time before the Prehearing Conference to be  
17 able to respond to it, and I think that, given that the 1<sup>st</sup>  
18 is a valuable date for people, and given that we are not  
19 asking that testimony be filed earlier, simply the  
20 statement, I do not think it is unreasonable, and I think it  
21 will mean that the Prehearing Conference has much more value  
22 in that we are able to sort through the issues much more  
23 easily than if the filing comes in the middle of the  
24 Prehearing Conference, or at the close of business on the  
25 1<sup>st</sup>.



1           HEARING OFFICER CELLI: You make an important point,  
2 and first of all, I am trying to give adequate notice to all  
3 of the parties. The 28<sup>th</sup> of June, which is the last work day  
4 in June - I am sorry, in May - is nine days from now. The  
5 31<sup>st</sup>, which is Memorial Day and a holiday is Monday, and then  
6 Tuesday June 1<sup>st</sup> is when we are having our Prehearing  
7 Conference. What I think the best we could ask for is that  
8 the Intervenor file their identification of issues and  
9 witnesses by let's say 9:00 that morning. I think we have a  
10 10:00, if I am not mistaken, we have a 10:00 hearing. So if  
11 electronic filing occurs at 9:00, again, we are talking  
12 about a summary of issues and an identification of the  
13 witnesses. We are not going to get actual testimony, so we  
14 are not wading through reams of paper here.

15           MS. HOLMES: Right, I understand that, and that was  
16 another reason why I thought it was appropriate to move it  
17 back one day so that the parties had a chance to review it  
18 before the Prehearing Conference. I also will notice that  
19 the parties have been participating in this proceeding for  
20 quite some time and have failed yet to articulate what the  
21 issues are, and I do not think it should be that challenging  
22 an exercise.

23           HEARING OFFICER CELLI: That is - I would order for  
24 9:00 in the morning. I think that is reasonable. And  
25 speaking of what the issues are, I would like to get into

1 that next. But before I do, the only party we have not  
2 heard from yet is CBE, which is Shana Lazerow. Are you on  
3 the line, Ms. Lazerow?

4 MS. LAZEROW: I am, yes.

5 HEARING OFFICER CELLI: Hello. What I wanted to  
6 know is were you able to hear all of the discussion with  
7 regard to the June 1<sup>st</sup> Prehearing Conference date and -- ?

8 MS. LAZEROW: Yes.

9 HEARING OFFICER CELLI: Do you understand, then,  
10 that what we are going to require of the Intervenor's will  
11 be, on June 1<sup>st</sup>, you are going to have to identify the issues  
12 and your witnesses in a document that will be e-mailed to  
13 all of the parties by 9:00 a.m. on June 1<sup>st</sup>? So you heard  
14 and understand that?

15 MS. LAZEROW: I did, thank you.

16 HEARING OFFICER CELLI: And then we are going to  
17 have a June 15<sup>th</sup> date for the Intervenor's to actually submit  
18 their testimony to the parties, and so we will want that by  
19 - usually be 3:00 on June 15<sup>th</sup>. And our hearing will be set  
20 for July 19<sup>th</sup>. So I really want to thank the parties, it  
21 sounds like about the best we are going to get in terms of  
22 the schedule, and any question about that, Ms. Lazerow?

23 MS. LAZEROW: No questions.

24 HEARING OFFICER CELLI: Thank you. So with that, I  
25 am going to move to the second part of our discussion, which

1 was a discussion of the Prehearing Conference Statement of  
2 Issues that we have so far, and I want to acknowledge that  
3 the Applicant states that the evidence is complete, ready to  
4 proceed to Evidentiary Hearings, staff says they are unaware  
5 of any issues that are incomplete or require adjudication,  
6 do I have that right? Yes, I am seeing nodding --

7 MR. CARROLL: Yes, correct.

8 HEARING OFFICER CELLI: -- from the Applicant and  
9 staff. One of the things I just want to say, Ms. Mezaros,  
10 Ms. Johnson Mezaros, and Ms. Lazerow, is that, when you  
11 appear by phone, I cannot see you nodding, and it helps a  
12 lot if I could see your heads nodding, but be that as it  
13 may... What we have received from CCAT so far, in terms of  
14 just the statements, is that they are not ready, or the  
15 Evidentiary Hearing was not yet ready to proceed to  
16 Evidentiary Hearing since the Commission has not determined  
17 whether the emissions credits are lawful, valid emissions  
18 offsets, which is exactly what the Evidentiary Hearing is  
19 all about. So we will handle those issues at the  
20 Evidentiary Hearing and I do not think that is a reason not  
21 to have an Evidentiary Hearing; that is the reason we are  
22 having an Evidentiary Hearing.

23 Now, the next question raised by CCAT is whether  
24 credits offered by AQMD to the Commission pursuant to AB  
25 1318 satisfy all applicable legal requirements. That is a

1 factual question that must be resolved at the Evidentiary  
2 Hearing. CCAT also says whether the offsets offering by  
3 AQMD to the Commission comply with all applicable laws  
4 remains in dispute. I think that is a restatement of the  
5 prior - whether the offsets offered by AQMD to the  
6 Commission were transferred in compliance with all  
7 applicable laws remains in dispute and needs adjudication.  
8 Whether Sentinel is adequately offsetting all of its  
9 emissions remains in dispute and requires adjudication.  
10 Those are the issues that have been raised in the Prehearing  
11 Statement of CCAT, all of which are the kinds of issues that  
12 we will have an Evidentiary Hearing to resolve.

13           Next, I have CBE, which pretty much had the  
14 identical language as CCAT in terms of their Issue  
15 Statements, but CBE added the issue as to whether Sentinel  
16 has a Purchase Agreement executed on or before December 31<sup>st</sup>,  
17 2008, to provide electricity to a public utility, pursuant  
18 to AB 13, that again is something that will be resolved in  
19 the Evidentiary Hearing. Lastly, CBE also says that, still  
20 in dispute are issues being litigated in the pending State  
21 Court Action CCAT vs. South Coast, it is an L.A. Superior  
22 Court Case BS-1242642, including 1) whether AB 13 is void,  
23 is unconstitutional, and 2) whether the Air Quality  
24 Management District has made all the necessary submissions  
25 to the United States EPA with regard to the crediting and

1 use of emission reductions, and shutdowns for minor sources,  
2 those are two issues. I want to state categorically that  
3 the first issue would not be relevant to these proceedings  
4 and we are not going to litigate the constitutionality of AB  
5 13, which is now - 1318, sorry - Health and Safety Code  
6 40440.14, I believe. So that is not anything that you need  
7 to spin your wheels on, we will not be tackling that issue.  
8 Whether AQMD has made all or necessary submission to the  
9 United States Environmental Protection Agency with regard to  
10 crediting and the use of the emission reductions and  
11 shutdowns from minor sources is a legal question that was  
12 raised by the Intervenors, I am going to let the parties  
13 deal with that today. I would like to hear, and we  
14 acknowledge that we have South Coast here today, and maybe  
15 they will be able to shed some light on that, but before I  
16 give way to public comment, I am just going to go around and  
17 ask the Applicant, staff, and Intervenors if there is  
18 anything about the recitation of the issues that I received  
19 in the Prehearing Conference Statements, that needs any  
20 discussion. So, Mr. Carroll first.

21 MR. CARROLL: Yes, I agree with the recitation of  
22 issues as identified in the Prehearing Conference Statements  
23 filed - I agree that your recitation of the issues  
24 identified in the Prehearing Conference Statement, as filed  
25 by the Intervenors, was accurate. I want to go back to a

1 point that I made earlier because I am not sure that I was  
2 being clear, and I think it is important. The issues that  
3 you just recited relate to the SO<sub>x</sub> and the PM<sub>10</sub> emission  
4 offset strategy associated with this project. My earlier  
5 point, and Hearing Officer Celli, you are correct that you  
6 are receiving into evidence at the Evidentiary Hearing all  
7 of the testimony related to air quality. But my point was  
8 that the Intervenorors were required to file air quality  
9 testimony on April 28<sup>th</sup> of 2010, the document was filed on  
10 that date indicating why they were unable to provide  
11 testimony, indicated that this whole basis precluding them  
12 from filing testimony was that they did not yet have the  
13 information from South Coast, therefore, my point is that we  
14 will object to any attempts between now and June 15<sup>th</sup> to  
15 provide testimony related to any issue beyond those related  
16 to the SO<sub>x</sub> and PM<sub>10</sub> emission offset strategy. In other words,  
17 if the Intervenorors had a problem with the VOC emission rate  
18 associated with this project, there was nothing that  
19 precluded them from filing testimony on that back on April  
20 28<sup>th</sup>. And so that was the point. I have not seen anything  
21 in the Prehearing Conference Statements, frankly, that  
22 suggest that the Intervenorors plan to go beyond the scope of  
23 those issues, but we think it is an important point in terms  
24 of narrowing down the issues that we have in front of us,  
25 and so I wanted to make sure that I was clear on that.

1 HEARING OFFICER CELLI: And that is clear. We, of  
2 course, are not going to rule on that because that is an  
3 evidentiary matter that we will deal with at the Evidentiary  
4 Hearing, but I understand what you are saying.

5 MR. CARROLL: Thank you.

6 HEARING OFFICER CELLI: Anything further, Applicant?

7 MR. CARROLL: No, nothing further.

8 HEARING OFFICER CELLI: Staff, Mr. Ratliff, please.

9 MR. RATLIFF: I believe you have restated the issues  
10 in a manner that we agree, so we have nothing to add to  
11 that.

12 HEARING OFFICER CELLI: Okay, and Ms. Johnson  
13 Mezaros, anything on the issues as I recited just now?

14 MS. JOHNSON MEZAROS: I would just like to quickly  
15 make two points, first, I would just note that we were  
16 assured that meetings by WebEx were as good, if not better,  
17 than being there in person, so I am sorry you cannot see -

18 HEARING OFFICER CELLI: They used to be. I need you  
19 to speak right into your phone, please.

20 MS. JOHNSON MEZAROS: Okay -

21 HEARING OFFICER CELLI: Their stock has gone way  
22 down, though. Go ahead.

23 MS. JOHNSON MEZAROS: The second point is, as to the  
24 issues that you recited, I would just like to draw again the  
25 distinction between what happened inside of this hearing,

1 this AFC hearing, and what we believe to be, to the extent  
2 that AB 13 is Constitutional, what we believe it clearly  
3 states on its face, which is that the Commission is going to  
4 make a determination about the emissions offset that are  
5 being offered to the Commission, and then, in the AFC  
6 hearing process, will determine whether or not Sentinel can  
7 rely upon the offsets that were offered by the South Coast.  
8 We believe that is two separate steps, and would have  
9 anticipated a separate decision and potentially a separate  
10 process for the Commission to make that determination, and  
11 so, to the extent that the Commission seems to be moving  
12 forward with those two issues together, then we will  
13 participate in the venue that has been offered to us, but we  
14 are raising a separate question about the Commission's  
15 determination about the validity of the emissions credits  
16 that are being offered by the South Coast.

17 HEARING OFFICER CELLI: Okay, and I understand what  
18 you are saying, and just to be clear, in our Administrative  
19 Hearing, we are going to handle everything in the single  
20 Evidentiary Hearing. The Order is usually something that is  
21 set by the Committee, and we will take under advisement your  
22 recommendation that we handle that question first regarding  
23 the compliance with 1318, but those are not separate issues;  
24 basically, we are handling all issues. And I just want to  
25 make the point that a normal Evidentiary Hearing is more



1 than just air quality, it is air quality by a culture of  
2 everything, and we are able to do that in one day. So we  
3 will be able to do air quality in one day, as well. So  
4 anything further, Ms. Johnson Mezaros?

5 MS. JOHNSON MEZAROS: I just want to be clear that  
6 my point is not the number of days upon which - within which  
7 we are discussing these issues, but my point is that, to the  
8 extent that AB 1318 is lawful, it indicates that the  
9 Commission make a separate determination about the validity  
10 of the credits that are being offered by the District. And  
11 although I understand that it seems that Sentinel is the  
12 only facility that qualifies under what has been outlined in  
13 4440.14, it could well have been that there were other  
14 facilities that were qualified for these credits. So to  
15 wrap together the determination about the validity with the  
16 AFC hearing process, we believe, violates the requirements  
17 of 4440. But nonetheless, to the extent that the Commission  
18 has determined that that is the venue within which we will  
19 be having - be making this determination, we intend to  
20 participate in that process.

21 HEARING OFFICER CELLI: Thank you very much.

22 MR. CARROLL: Mr. Celli, may I at some point speak  
23 to that?

24 HEARING OFFICER CELLI: Sure, I just want to make  
25 one thing really clear. This is a one-day hearing, at the

1 most. It is going to probably be a half day. And the  
2 parties need to take that into consideration, this is not a  
3 free-for-all, and we need to have an economical and  
4 efficient handling of this litigation. Please go ahead.

5 MR. CARROLL: Yes. From the Applicant's  
6 perspective, let me just state for the record right now that  
7 we do not believe that the suggestion that the Intervenor's  
8 have made, for the first time, as far as I am aware, in  
9 their Prehearing Conference Statement, which was just  
10 articulated by Ms. Johnson Mezaros, that there is somehow a  
11 need for a separate proceeding under AB 1318 has any merit  
12 whatsoever, that there is anything in the statute to suggest  
13 that is the case. Frankly, we think this is just the latest  
14 step in the Intervenor's' strategy to make the process  
15 associated with this project as complicated and as drawn out  
16 as possible. We think it is interesting that this issue was  
17 first raised the day after the previous issue that they had  
18 raised was addressed, in other words, the day after they  
19 received the information from South Coast, which was  
20 precluding them from moving forward, suddenly there is an  
21 interpretation of the statute which, by the way, these  
22 Intervenor's participate in and parse through, I believe,  
23 each and every word during the Legislative process, but that  
24 statute was signed by the Governor back in November, it has  
25 been effective since January, and now suddenly on May 15<sup>th</sup>,

1 we are getting a brand new interpretation that calls upon  
2 the committee to establish a new process and a new  
3 proceeding outside the scope of this siting case. And we  
4 find that laughable, frankly, and certainly not supported by  
5 the language of the statute.

6 HEARING OFFICER CELLI: I would, I just want to make  
7 a mention of the fact that, I mean, I have read the statute  
8 many times, I do not see anything about any particular  
9 order, but I am not going to preclude the Intervenor from  
10 making some sort of motion to that effect, and we can deal  
11 with that at the Evidentiary Hearing. With that, where were  
12 we? Oh, so we are wrapping up our discussion of Prehearing  
13 Conference Statements, and we have yet to hear from Shana  
14 Lazerow with regard to the recitation of the issues and  
15 anything you would wish to comment on that, Ms. Lazerow, at  
16 this time?

17 MS. LAZEROW: Uh, well, I first want to say that I  
18 am glad to hear that everyone has been reading 1318 very  
19 closely because obviously that is what the governing law  
20 around these credits. The reason that CBE's Statement of  
21 the Issues that remains disputed and require adjudication is  
22 so very specific is because 1318 does pull out these two  
23 kind of separate categories of proceedings for the  
24 Commission to undertake. So, yeah, the Commission does need  
25 to first make its conclusion about whether the credits are

1 legal, and whether they were legally transferred. And so  
2 that happens, actually, including whether or not Sentinel's  
3 Application for Certification can be granted, you know, a  
4 decision cannot be made on that. And so the validity of the  
5 credits and the validity of the transfer has been decided.  
6 I have read 1318, I, you know, nobody actually asked me what  
7 I thought every single word should say, but Mr. Carroll  
8 thinks that the Legislature was listening so closely to what  
9 I have to say, but unfortunately that is not the case. So  
10 the reason that CBE's Statement contains the articulation of  
11 the issues being litigated is because they are extremely  
12 important to this particular proceeding, and I am not  
13 suggesting that the CEC has soft-shoed this aside, the  
14 Constitutionality of the statute, and, in fact, I understand  
15 that it does not have that authority, but it is currently  
16 being litigated and will affect what happens in the  
17 proceeding. So that is all I wanted to clarify.

18 HEARING OFFICER CELLI: Thank you for your comments.  
19 With that, let me just ask the Commissioner, did you have  
20 any questions?

21 VICE CHAIR BOYD: Well, yes. This is Commissioner  
22 Boyd. I just wanted to say, I do not know if we have an  
23 issue of semantics here, or radical interpretation of law,  
24 and I am trying to understand whether the Intervenors are  
25 truly asking for a second proceeding because of this special

1 provision relative to this one special case, or whether what  
2 you are really saying is there is an additional separate  
3 task or activity that is called out in this piece of  
4 legislation relative to this one proceeding that we are  
5 engaged in, this one application for a license, that you  
6 feel needs to be done, oh, let's just say, serially, or  
7 something like that. Does my confusion make sense to either  
8 of you? And do you want to address it -

9 MR. CELLI: When you say "you," who are you talking  
10 about?

11 VICE CHAIR BOYD: The two Intervenors, I am sorry.

12 MS. LAZEROW: Commissioner, I do understand your  
13 confusion, and I think that it is important to look,  
14 actually, at the language of AB 1318 to answer that because  
15 it specifically calls out the exercise of the Commission's  
16 regulatory responsibilities, when it goes through its  
17 certification process as a separate thing, a separate  
18 entity, from the process of looking to see whether the  
19 transfer was legal, and whether the credits themselves  
20 satisfy all the legal requirements. So I actually do think  
21 that there needs to be a separate non-certification process  
22 whereby this Commission actually gave attention to what the  
23 law says about transferring credit from AQMD through CEC,  
24 and what actually goes into making a valid credit. I think  
25 that is what AB 1318 says. I am not saying that that is a

1 good idea, I am just saying that is what the law says. So  
2 maybe Ms. Johnson Mezaros has something to add to that, but  
3 that is my reading of AB 1318.

4 HEARING OFFICER CELLI: Ms. Johnson Mezaros, did you  
5 wish to respond to the Commissioner's question?

6 MS. JOHNSON MEZAROS: Yes. I agree that the  
7 language of the statute seems to call out two separate  
8 activities in section - I do not know if - not being able to  
9 see you, I am not sure if you have the language in front of  
10 you.

11 VICE CHAIR BOYD: I have the law in my hand.

12 MS. JOHNSON MEZAROS: Okay, so if you go to Section  
13 4440.14(C) and then the second sentence, it says that "the  
14 State Energy Resources Conservation and Development  
15 Commission shall determine whether the emissions credits to  
16 be credited and transferred satisfy all applicable legal  
17 requirements." Then the next sentence says that, "in the  
18 exercise of its regulatory responsibilities under the Power  
19 Facility and Site Specification Authority, the Commission  
20 shall not certify an eligible facility if it determines that  
21 the credit and transfer by the South Coast did not set aside  
22 all applicable requirements." It is not my intention to  
23 suggest that these two processes cannot go on in parallel,  
24 but it is my intention to suggest that it seems that the  
25 statute calls for a determination from the Commission about

1 the credits and their transferability separate from its  
2 determination to allow the facility to rely upon them in  
3 their certification process. So if the Commission  
4 determines that it wants to handle those two things at the  
5 same time, I think that is a determination for the  
6 Commission to make, but it does seem clear from the face of  
7 the statute that, to the extent that it is lawful, it is  
8 asking the Commission to make a specific determination about  
9 the credits and their transferability.

10 VICE CHAIR BOYD: Okay, I thank you both for  
11 clearing up your views of what the law says, thank you.

12 HEARING OFFICER CELLI: Thank you. And now, at this  
13 time, unless there is anything further from any of the  
14 parties, Mr. Carroll, you have something please?

15 MR. CARROLL: Yes. One additional item, and having  
16 nailed down all the dates and the steps, I am hesitant to  
17 raise this, but hopefully it will not be problematic. It  
18 seems to me that we probably need an opportunity for the  
19 other parties to file rebuttal testimony following the  
20 testimony on June 15<sup>th</sup>, so what I would propose is that, by  
21 June 30<sup>th</sup>, which would still be well in advance of the  
22 Evidentiary Hearing, the staff and the Applicant be provided  
23 an opportunity to file rebuttal testimony to the Intervenor  
24 testimony that is due by June 15<sup>th</sup>.

25 HEARING OFFICER CELLI: And that is imminently

1 reasonable and I think that is what the Order will show. So  
2 rebuttal would be June 30<sup>th</sup>, and that will be all parties'  
3 rebuttal. So the way we have it is Prehearing Conference on  
4 the 1<sup>st</sup>, the identity of the issues and the identity of the  
5 witnesses will also be due at 9:00 A.M. on June 1<sup>st</sup>; at 3:00  
6 P.M. on June 15<sup>th</sup>, the actual testimony from Intervenors CCAT  
7 and CBE will be delivered to the parties and the Hearing  
8 Advisor's Office in the POS. And the Rebuttal on June 30<sup>th</sup>,  
9 and we will say by 3:00 P.M. on June 30<sup>th</sup>, all parties'  
10 rebuttal testimony will be filed. And then we are going to  
11 have our hearing on July 19<sup>th</sup>. I really appreciate the  
12 parties making this work in the end. At this time, seeing  
13 no further questions from any of the other parties, I am  
14 going to open up the podium to public comment, and when we  
15 do this, I would call first out to any state agencies. We  
16 have South Coast Air Quality Management District is here, so  
17 with that, anyone from South Coast who wishes to make a  
18 comment, we would welcome.

19 Yes, that is correct, that is a local agency, not a state  
20 agency. South Coast was invited by staff, is that correct?

21 MR. RATLIFF: Well, I would not to imply that they  
22 came without an invitation. We are glad they are here.

23 HEARING OFFICER CELLI: Thank you. With that, any  
24 comment from South Coast, please come forward to the podium  
25 and comment. Thank you.



1           MR. WIESE: This is Kurt Wiese, General Counsel for  
2 the South Coast. I am very pleased to be here. We do not  
3 have any comment at this time, though. We are more than  
4 happy to answer any questions for you right now.

5           HEARING OFFICER CELLI: I would be interested to  
6 hear, if I may, your take on the Intervenor's proposition  
7 that there is a sequentiality to the 1318 requirements.

8           MR. WIESE: Well, we do not read the statute that  
9 way. I think the statute is pretty clear that, in exercise  
10 of its siting function, the Committee is to make the final  
11 judgment.

12          HEARING OFFICER CELLI: And let me ask you this,  
13 also, Mr. Wiese, I understand you were involved in the  
14 Public Records Act Request and satisfaction of that, and can  
15 you give the committee some idea of what documents are in  
16 that response?

17          MR. WIESE: Let me first clarify, too, that the  
18 records request was responded to a week ago today, so... And  
19 there are a number of facilities that offsets are being  
20 transferred from, and so the files detailed the calculation  
21 of those offsets.

22          HEARING OFFICER CELLI: Okay, really, that is pretty  
23 much it, just -

24          MR. WIESE: I am going to defer to Mr. Nazemi here  
25 because, actually, he put together the files and the

1 documents that were involved in the request. Is there  
2 anything else, Mohsen?

3 MR. NAZEMI: Thank you. As Mr. Wiese indicated, the  
4 Public Records Act request from South Coast to provide what  
5 information we used in order to determine the integrity of  
6 the offsets, meeting the criteria of being real, permanent,  
7 enforceable, quantifiable, and [inaudible] [1:14:25], and so  
8 the records that we produced included all the documentation  
9 that we had relied upon in terms of the calculations,  
10 records that the District had in their possession, it was a  
11 lot of records, we think, to make those determinations.

12 HEARING OFFICER CELLI: Okay, thank you. And those  
13 records were provided to staff, as well, and Applicant? Do  
14 we know?

15 MR. RATLIFF: Yes.

16 HEARING OFFICER CELLI: Okay.

17 MR. CARROLL: Yes.

18 HEARING OFFICER CELLI: Thank you.

19 MR. CARROLL: Pursuant to a Public Records Act  
20 request that the Applicant made of the South Coast.

21 HEARING OFFICER CELLI: Okay. Thank you. I just  
22 wondered, Commissioner, do you have any questions of South  
23 Coast while we have them?

24 VICE CHAIR BOYD: No, I just thank them for being  
25 here and I appreciate you saying a few words, otherwise, it

1 would make for a long day of air travel.

2 HEARING OFFICER CELLI: Thank you very much.

3 MR. NAZEMI: Can I actually ask you a question, the  
4 Evidentiary Hearing on July 19<sup>th</sup>, what time are you setting  
5 it for?

6 HEARING OFFICER CELLI: I believe we are going to  
7 set it for 10:00 in the morning.

8 MR. NAZEMI: Thank you.

9 HEARING OFFICER CELLI: Thank you very much for your  
10 participation and your comments.

11 MR. WIESE: Thank you.

12 HEARING OFFICER CELLI: Ms. Jennings, please, are  
13 there any public members present today?

14 MS. JENNINGS: No, I do not have anything.

15 HEARING OFFICER CELLI: Ms. Jennings has no public  
16 advisor - we have on the line, now, several people who have  
17 called in, who are not identified. I have call-in user 11,  
18 call-in user 4, and call-in user 5, which means nothing to  
19 you out there in the ether. I just want to invite anybody  
20 who called in, who wanted to make a comment, at this time,  
21 to state your name, please. I am hearing nothing. I have  
22 call-in user 11 - oh, call-in user 4, are you there?  
23 Somebody just hung up. I do not mean to scare people away  
24 with this, I really am interested and we, the community, is  
25 interested in hearing from the public. I have - let's see,

1 Roy Beldin for some reason is muted. Let me unmute him.

2 Mr. Beldin, did you wish to make a comment?

3 MR. BELDIN: Yeah, no, I do not have any comment,  
4 thanks.

5 HEARING OFFICER CELLI: Okay, thank you. Mavis  
6 Scanlon, did you wish to make a comment?

7 MS. SCANLON: I have no comments, thank you.

8 HEARING OFFICER CELLI: Thank you. William  
9 Kissinger, did you wish to make a comment?

10 MR. KISSINGER: No, I have no comment either. Thank  
11 you, though.

12 HEARING OFFICER CELLI: Thank you. William Kelly?  
13 Any comment from Mr. William Kelly?

14 MR. KELLY: No comment, thank you.

15 HEARING OFFICER CELLI: Thank you for that, I am  
16 joking, I just heard some sort of electronic dial tone. I  
17 do not know who Ted is, but they are not on the line. Steve  
18 Radis, any comment?

19 MR. RADIS: I have no comment.

20 HEARING OFFICER CELLI: Okay, so is there anyone  
21 else on the line, any member of the public or anyone who  
22 wishes to make a comment at this time?

23 MS. JOHNSON MEZAROS: Mr. Celli?

24 HEARING OFFICER CELLI: Yes, who is speaking?

25 MS. JOHNSON MEZAROS: This is Angela Johnson Mezaros

1 and I have pushed my little raised hand.

2 HEARING OFFICER CELLI: I see that. You have the  
3 floor.

4 MS. JOHNSON MEZAROS: Thank you. I just wanted to  
5 say something very quickly in response to the question about  
6 the District's Public Records Act responses, and that is  
7 first to simply note that, upon providing the documentation  
8 that CCAT requested, the District also amended its - offered  
9 an Addendum to its previous Addendum to the Final  
10 Determination of Compliance, in which it appears that  
11 numbers and facilities changed from its original submission,  
12 and we do not understand, we saw today that the staff  
13 submitted some supplemental documentation suggesting that  
14 there was a recalculation of emissions credited to  
15 facilities based on an interpretation of federal law. But I  
16 wanted to raise the point that it appears in response to our  
17 Public Records Act request, there may have been some  
18 shifting in the position of the District vis a vis the  
19 credits that it offered to the Commission, and it is that  
20 kind of thing that we are still trying to determine from the  
21 records that were submitted, and we look forward to having  
22 our expert be able to comment upon that by the 15<sup>th</sup> of June.

23 HEARING OFFICER CELLI: I am going to - anything  
24 further on that, Ms. Johnson Mezaros?

25 MS. JOHNSON MEZAROS: That is it.

1           HEARING OFFICER CELLI: Thank you. I am going to  
2 give Mr. Wiese another opportunity to address that, if you  
3 wish.

4           MR. WIESE: I think Ms. Johnson Mezaros made the  
5 suggestion that somehow our response changed in response to  
6 her Public Records Act request, that is simply not the case.  
7 We had gone through an further refined the numbers that were  
8 submitted in the initial response, and that is what  
9 constituted our further response.

10          HEARING OFFICER CELLI: Thank you for that  
11 clarification. I did note that I did receive an Addendum, I  
12 guess, from South Coast this week, and I do believe I  
13 received - oh, I received Errata from staff this week, as  
14 well. So if this is all, it seems to me in service to  
15 having a more and complete record, which is one of the  
16 benefits, I guess, of our current schedule situation. With  
17 that, and as long as I have the Intervenors, we are going to  
18 have a Prehearing Conference coming up. I am encouraging  
19 all the parties to stay in communication, specifically the  
20 Intervenors. There are certain issues that do not need to  
21 be adjudicated if the parties can just communicate and work  
22 those out, and so I am going to encourage the parties to be  
23 in communication because we have limited time and anything  
24 that we can do to have a more efficient hearing, we would  
25 appreciate. With that, Commissioner Boyd, I believe that is

1 it?

2 VICE CHAIR BOYD: Well, if there is nothing more to  
3 come before us, again, I thank you all for your indulgence  
4 and your patience on this case, it is a little  
5 extraordinary, and I thank you again. And we will adjourn  
6 the hearing.

7 [Adjourned at 3:12 P.M.]

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